

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MASS DYNAMICS, LLC, BOSTON)
VAPOR, LLC, LINDA AND JEFFREY)
VICK d/b/a VICK'S VAPE SHOP,)
JIMBUDDY'S INCORPORATED, and,)
JERALD MOLLMAN d/b/a J'S VAPOR)
DEN,)
Plaintiffs,)

v.)

CHARLES D. BAKER, in his official)
capacity as GOVERNOR OF THE)
COMMONWEALTH OF)
MASSACHUSETTS, MONICA BHAREL,)
M.D., in her official capacity as)
DEPARTMENT OF PUBLIC HEALTH)
COMMISSIONER, and)
COMMONWEALTH OF)
MASSACHUSETTS,)
Defendants.)

CIVIL ACTION NO. 19-12035

ORAL ARGUMENT REQUESTED

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, the Plaintiffs, Mass Dynamics, LLC ("Mass Dynamics"), Boston Vapor, LLC ("Boston Vapor"), Linda and Jeffrey Vick d/b/a Vick's Vape Shop ("Vick's Vape"), JimBuddy's Incorporated ("Jim Buddy's"), and Jerald Mollman d/b/a J's Vapor Den ("J's Vapor Den") (collectively, the "Plaintiffs"), a group of small, family owned and operated business within the Commonwealth of Massachusetts, hereby move for a temporary restraining order and a preliminary injunction suspending enforcement, pending full disposition of the claims of the Plaintiffs' on the merits, of a putative emergency declaration (the "Declaration") issued by Defendant Charles D. Baker, in his official capacity as Governor of the Commonwealth of Massachusetts ("Governor Baker"), and an Order (the

“Commissioner’s Order”) issued by Defendant Monica Bharel, M.D. (“Dr. Bharel”), effectuating a ban (the “Ban”) on marketing and sale of electronic cigarettes, vapes, vaporizers, vape pens, hookah pens, e-pipes and related products and components thereof - known as electronic nicotine delivery systems (“ENDS”) – in addition to so-called “e-liquids,” which have been deemed safe and effective for marketing and use in the United States by the Food and Drug Administration and are regulated by the FDA.

As grounds therefor, the Plaintiffs state that the Declaration, the Commissioner’s Order and the Ban violate the rights of the Plaintiffs secured by the United States Constitution. The Plaintiffs further request a declaration pursuant to 28 U.S.C. § 2201 and permanent injunction and/or a final order vacating the Governor’s Declaration, the Commissioner’s Order, and the Ban, as well as compensation for lost business income and attorney’s fees pursuant to 42 U.S.C. § 1988.

The grounds for this motion are set forth in the accompanying Memorandum of Points and Authorities in Support of this Motion for Temporary Restraining Order and Preliminary Injunction, which are incorporated herein by reference. Plaintiffs further rely upon their Verified Amended Complaint being filed concurrently with its motion papers in the captioned proceeding.

WHEREFORE, the Plaintiffs respectfully request that the Court temporarily suspend the Governor’s Declaration, the Commissioner’s Order and the Ban and temporarily enjoin the Defendants, and all others in active concert or participation with them, from taking any action to implement or enforce the Declaration, the Commissioner’s Order and the Ban or otherwise seek to ban the marketing or sale of ENDS products in Massachusetts. The Plaintiffs further request the issuance of a

declaration pursuant to 28 U.S.C. § 2201 and permanent injunctive relief and/or a final order vacating the Declaration, the Commissioner's Order and the Ban. In addition, the Plaintiffs seek compensation for lost business income and attorney's fees from the Commonwealth of Massachusetts pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988. A proposed Order accompanies this Motion.

Respectfully submitted,

PLAINTIFFS,
MASS DYNAMICS, LCC,
BOSTON VAPOR, LLC,
LINDA AND JEFFREY VICK d/b/a
VICK'S VAPE SHOP,
JIMBUDDY'S INCORPORATED,
and JERALD MOLLMAN d/b/a
J'S VAPOR DEN,
By their attorney,

/s/ Craig E. Rourke

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Dated: October __, 2019

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was filed with the Office of the Civil Clerk for the United States District Court, District of Massachusetts, via electronic means, and will be sent electronically to the Defendants on October __, 2019. Paper copies will be served by hand on the Defendants at the following addresses on October 3, 2019:

Governor Charles Baker

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Commissioner of DPH Monica Bharel, M.D.

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/s/ Craig E. Rourke
Craig E. Rourke

LOCAL RULE 7.1(A)(2) CERTIFICATION
AND CERTIFICATE OF SERVICE

I, Craig E. Rourke, hereby certify that Attorney Cheryl Jacques of my office conferred with counsel from the Office of the Massachusetts Attorney General on or around October 1, 2019 in an effort to resolve or narrow the issues presented in this motion prior to filing.

/s/ Craig E. Rourke

Craig E. Rourke